1203.

SUPREME COURT OF THE UNITED STATES.

No. 135.

OBADIAH H. PLATT, PL'FF IN ER.,

vs.

CHAUNCEY JEROME.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

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UNITED STATES OF AMERICA, *ss:*

The President of the United States, to the Judges of the Circuit Court holden in and for the southern district of New York in the second circuit, greeting: [L. S.]

Because that on the record and process, and also in the rendering of judgments in a suit before you, or some of you, between Obadiah H. Platt, plaintiff, and Chauncey Jerome, defendant, in a plea of trespass on the case on premises, a manifest error hath intervened to the great damage of the said Obadiah H. Platt, as in his complaint hath been stated:

And as it is just and proper that the error, if any there be, should be corrected in due manner, and that full and speedy justice should be done to the parties aforesaid in this behalf:

You are commanded, that if judgment thereof be given, then under your seal you do distinctly and openly send the record and process in the suit aforesaid, with all things concerning them, and this writ, so that you have the same before the Chief Justice and the Associate Justices of the Supreme Court of the United States, on the first Monday of December next, at Washington, being the present seat of the National Government, that the record and proceedings aforesaid, being inspected, they may cause to be done thereupon what of right ought to be done.

Witness, the honorable Roger B. Taney, Chief Justice of the said Supreme Court at Washington aforesaid, this ninth day of August, in the year of our Lord one thousand eight hundred and fifty-five, and of the independence of the United States of America the seventy-ninth.

JOHN W. NELSON,
Clerk of the Circuit Court of the United States for the Southern Dist. of New York.

[Endorsed:] Supreme Court of the United States. Obadiah H. Platt, plaintiff in error, vs. Chauncey Jerome, defendant in error. Writ of error. John E. Burrill, jr., at'ty for p'ltff in error. Filed August 10, 1855.

The answer of the honorable the Judges of the Circuit Court of the United States for the south. dist. of New York to the within writ containing the citation. Judgment record and bill of exceptions.

Attest:

JOHN W. NELSON,
Clerk.

[REC. CXXXV., D. T., 1855.]—1

UNITED STATES OF AMERICA, *ss:*

To Chauncey Jerome, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the Circuit Court of the United States for the second Circuit and southern district of New York, wherein Obadiah H. Platt is plaintiff and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness, the honorable Samuel R. Betts, one of the Justices of the Circuit Court of the United States for the Southern District of New York, the 9th day of August, 1855.

SAM'L R. BETTS.

(Filed August 10, 1855.)

Rec'd a copy of the within. August 9th, 1855.

G. C. GODDARD,
Att'y of def't in Circ't Ct.

Pleas in the Circuit Court of the United States for the second circuit, held at the City Hall, in the city of New York, in and for the southern district of New York, of the twenty-first day of May, 1847.

Present, the Hon. Samuel Nelson, justice; John W. Nelson, clerk.

CITY AND COUNTY OF NEW YORK, ss:

Obadiah H. Platt, who is a citizen and resident of the city and State of New York, by C. B. Gay, his attorney, complains of Chauncey Jerome, defendant in custody, who is a citizen and resident of the city of New Haven, and the State of Connecticut, of a plea of trespass on the case upon premises.

For that whereas one Franklin Merrill, heretofore, to wit, on the first day of March, in the year one thousand eight hundred and forty-four, at Poughkeepsie, to wit, at the city and county of New York, made a certain bill of exchange in writing, bearing date the day and year aforesaid, and then and there directed the said bill of exchange to the said defendant, by the name of Mr. Chauncey Jerome, by which said bill of exchange the said Franklin Merrill then and there requested the said defendant, Chauncey Jerome, five months after date, to pay to his (the said Franklin Merrill's) order, at the Union Bank, in the city of New York, sixteen hundred and seventy-eight $\frac{37}{100}$ dollars, for value received. And the said Franklin Merrill, to whom or to whose order the payment of the said

sum of money in the said bill of exchange specified was to be made as aforesaid, afterwards and before the payment of the said sum of money mentioned in the said bill of exchange, or any part thereof, and also before the time limited and appointed by the said bill of exchange for the payment thereof, to wit, on the same day and year, and at the place aforesaid, endorsed the said bill of exchange in writing, and by that endorsement, ordered and appointed the contents thereof to be paid to the said plaintiff, and then and there delivered the said bill of exchange, so endorsed, to the said plaintiff, which *which* said bill of exchange the said defendant afterwards, to wit, on the first day of March, in the year one thousand eight hundred and forty-four, at the place aforesaid, upon sight thereof, accepted, and who then and there had notice of the endorsement so made thereon as aforesaid. By reason whereof, and according to the usage and custom of merchants, the said defendant then and there became liable to pay to the said plaintiff the said sum of money in the said bill of exchange specified, and being so liable, the said defendant, in consideration thereof, afterwards, to wit, on the same day and year last aforesaid, and at the place aforesaid, undertook, and then and there faithfully promised the said plaintiff, to pay unto the said plaintiff the said sum of money in the said bill of exchange specified, according to the tenor and effect of the said bill of exchange of the acceptance thereof, and of the said endorsement so thereon made as aforesaid.

And whereas, also, the said defendant afterwards, to wit, on the first day of January, in the year one thousand eight hundred and forty-seven, at the place aforesaid, was indebted to the said plaintiff in the sum of four thousand dollars, lawful money of the United States of America, for money before that time lent and advanced by the said plaintiff to the said defendant; and at the special instance and for other money by the said plaintiff before that time paid, laid out, and expended for the said defendant, and at the request of the said defendant; and for other money by the said defendant before that time had and received to and for the use of the said plaintiff; and being so indebted, the said defendant, in consideration thereof, afterwards, to wit, on the same day and year last aforesaid, and at the place aforesaid, undertook, and then and there faithfully promised the said plaintiff, the said sum of money in this count mentioned when the said defendant should be thereunto afterwards requested.

And whereas, also, the said defendant, afterwards, to wit, on the same day and year last aforesaid, and at the place aforesaid, accounted together with the said plaintiff of and concerning divers other sums of money before that time due and owing from the said defendant to the said plaintiff, and then and there being in arrears and unpaid; and upon such accounting the said defendant then and there was found to be in arrear and indebted to the said plaintiff in the further sum of four thousand dollars of like lawful money as

aforesaid; and being so found in arrears and indebted to the said plaintiff, the said defendant, in consideration thereof, afterwards, to wit, on the same day and year last aforesaid, and at the same place aforesaid, undertook and then and there faithfully promised the said plaintiff well and truly to pay unto the said plaintiff the said sum of money last mentioned when the said defendant should be thereunto afterwards requested.

Nevertheless, the said defendant (although often requested, &c.) has not yet paid the said several sums of money above mentioned, or any or either of them or any part thereof, to the said plaintiff; but to pay the same or any part thereof to the said plaintiff the defendant has hitherto wholly refused, and still does refuse, to the damage of the said plaintiff of four thousand dollars, and therefore the said plaintiff brings suit, &c.

And the said defendant, by George C. Goddard, his attorney, comes and defends the wrong and injury, when, &c., and says that he did not promise and undertake in manner and form as the said plaintiff above thereof complains against him, and thereof he puts himself on the country and the said plaintiff likewise, &c.

To which place the following notice was subjoined:

SIR: You will please take notice, that the defendant will give evidence on the trial of this cause and will insist that said acceptance, if made, was made without funds and without consideration, and was procured by imposition and fraud on the part of the said Merrill, and was void; and that if the same was negotiated, such transfer was fraudulent; that no consideration was paid on such transfer; and that the plaintiff, when he took said bill of exchange, knew that it was without consideration and fraudulent and void, as to the defendant, and knew the circumstances under which it was given and obtained; and the said defendant will require the plaintiff to prove the consideration which said acceptance, if proved, was obtained, and when he obtained it, and the consideration which he gave for said draft; and also, that the said draft heretofore, to wit, on the first day of July, 1844, at the city of New York, was negotiated to and purchased by Andrew J. Roe, then and now an attorney and counsellor and solicitor, with the intent and for the purpose on his part of bringing suit thereon contrary to the statute in such case provided.

And the defendant will also give in evidence, that when the said draft was negotiated, he, the plaintiff, was and still is an attorney, counsellor, and solicitor, and that he bought the said draft with the intent and for the purpose of bringing suit upon it contrary to the statute in such case provided, to wit, on the day and year, and at New York aforesaid. June 10, '47. Yours, &c.,

GEORGE C. GODDARD,
Att'y for Defendant.

To C. B. GAY, Esq., *Att'y for Plaintiff.*

And thereupon, on motion, John E. Burrill, junior, is substituted as attorney of the plaintiff.

And hereupon the process and proceedings aforesaid between the parties aforesaid are continued until the first Monday of April, of April term, in the year one thousand eight hundred and fifty-three, before the justice aforesaid, at the City Hall aforesaid.

At which day came the parties aforesaid, by their att'ys aforesaid, at the place and before the justice aforesaid; and the jurors of the jury summoned to try the said issue also came, who being chosen, tried, and sworn, say upon their oath, that the said defendant did not undertake in manner and form as the said plaintiff has above complained against him.

And because this Court here are not yet advised what judgment to give of and upon the premises, a day is therefore given to the parties aforesaid, until the third Monday of October, in the year one thousand eight hundred and fifty-four, to hear their judgment thereupon.

At which day, before the justices of the said Court, the honorable Samuel Nelson and Samuel R. Betts, came the parties aforesaid, by their attorneys aforesaid, and hereupon all and singular the premises being seen, and by the said justices here fully understood, and mature deliberation being thereupon had, it is considered that the said plaintiff take nothing by his said trial, and that the said defendant do go thereof without day.

And it is further considered, that the said defendant do recover against the said plaintiff, Obadiah H. Platt, three hundred eighty-one dollars thirty-five cents for his costs and charges by the defendant, Chauncey Jerome, about his defence in this behalf expended by the Court, here adjudged to the said defendant, with his assent, and that the defendant have executions therefor.

Signed this 30th day of July, 1855.

R. E. STILWELL,
Dep. Clerk.

U. S. CIRCUIT COURT, SECOND CIRCUIT,
Southern District of New York:

OBADIAH H. PLATT
vs.
CHAUNCEY JEROME.

Afterwards, to wit, at a Circuit Court of the United States, held at the city of New York, on the fifth and sixth days of May, in the year of our Lord one thousand eight hundred and fifty-three, for the second circuit and southern district of New York, before the honorable Samuel Nelson, one of the circuit judges, the aforesaid issues came on to be tried before a jury for that purpose duly empanelled.

At which time came there as well the said plaintiff as the said defendant, by their respective attorneys aforesaid, and the jurors of the jury aforesaid empanelled to try the said issues also came, and were then and there in due manner chosen and sworn to try the same; and upon the trial of the said issue, the counsel for the plaintiff to prove and maintain the said issue on his part called as a witness

Horace Burr, who being sworn, proved that he was a bill or note-broker; that he had the acceptance in suit, and which was then shown to him, in his possession in or about the middle of March, 1844; that he received it from Franklin Merrill for the purpose of negotiating the same; that he presented it to the defendant between the tenth and fifteenth of March; and the defendant took it in his hands, and examined it, and said that it was business paper, and would be paid promptly when due. The witness did not succeed in negotiating it, and returned it to Merrill. About the first of April, the plaintiff called on the witness, and asked him if he had ever seen the d'ft; the witness said he had—that he saw Platt, and told him what Jerome had said about it.

Plaintiff saw that his object in making the inquiry was with a view to a purchase of the d'ft.

On being cross-examined, the witness proved that plaintiff was a lawyer at that time; that he, witness, never knew Merrill before the middle of March. Witness had other notes and acceptances of Jerome at the same time, amounting to about ninety-five hundred dollars; that, in the interview with Jerome, he told him he did not want to negotiate the paper, unless it was good business paper; Jerome did not say for what purpose he had given the paper to Merrill.

Henry Mixer, a witness for the plaintiff, proved the signature of Merrill as drawer and endorser of the note in suit.

He also proved the signature of Merrill to the two receipts hereinafter mentioned—one dated April 4th, 1844, and the other 1st March, 1844.

On his cross-examination, he proved that Merrill was a dealer or speculator in wool; that he knew the plaintiff, and that he was the lawyer of Merrill.

The testimony of the following witnesses was read by consent from the former case settled in this action, as follows:

Samuel Young, a witness for the plaintiff, being sworn, testified that he was note-teller in the Phœnix Bank. Being shown the bank-book of the plaintiff, he proved the entry therein of the draft in suit in this cause, on the fourth April, 1844; on that day, Platt deposited the draft in the bank for collection. By referring to the number 1667 on the back of the d'ft and to the books of the bank, I find that this is the draft.

(The witness was here shown the draft in suit.)

Mr. Platt endorsed it at the time he deposited it. After it was protested for non-payment, it was returned to the plaintiff.

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The plaintiff's counsel hereupon offered and read in evidence the draft in question, in the words and figures following, viz:

POUGHKEEPSIE, N. Y., *M'ch* 1, '44.

$1678 $\frac{73}{100}$.

Five months after date, pay to my order, at the Union Bank in the city of New York, sixteen hundred seventy-eight $\frac{73}{100}$ dollars, for value received, and placed to account of

Your ob'd servant,

FRANKLIN MERRILL.

Mr. CHAUNCEY JEROME,
New Haven, Ct.

Accepted.

CHAUNCEY JEROME.

Endorsed: 1667. Franklin Merrill, pay N. G. Ogden, esq., cashier. O. H. Platt.

The plaintiff proved the interest on the acceptance; and that the acceptance with interest amounted to the sum of $2617 93.

The plaintiff here rested his case.

The counsel for the defendant to sustain the issue on his part called

Andrew J. Roe as a witness, who testified that a suit was brought in his name in the Superior Court in New Haven, without his knowledge, while witness was a clerk in plaintiff's law office; that he first heard of it in December, 1844, and spoke to the plaintiff, who told him that he had sued the draft in his name in order to be a witness; that he released Platt from all liability on the draft; that he did not recollect anything about the draft being assigned to him; that it was never assigned to witness by his consent; that he gave plaintiff his note for the draft, dated back in August, 1844, in order to make a consideration for the transfer of the draft, or to enable Platt to swear to a consideration for the transfer to me when he came to testify. The endorsement on the draft, O. H. Platt, is plaintiff's signature. What witness did was done at the request of Platt. Witness never re-transferred the draft to Platt, because he, witness, never had it. The note was returned to witness by plaintiff in the spring of 1847. This is the note and the receipt which I gave the plaintiff:

NEW YORK, *August 30th*, 1844.

$1678 $\frac{73}{100}$.

For value received, I promise to pay to the order of O. H. Platt sixteen hundred seventy-eight $\frac{73}{100}$ dollars, with interest, three months after date.

ANDREW J. ROE.

Received of O. H. Platt a note of mine, of which the above is a copy, for which I do hereby transfer to said Platt all right, title, and interest, if any, which I now have or ever had to an acceptance of Chauncey Jerome of the same amount, and upon which a suit was commenced in my name against said Jerome.

And I hereby, in consideration of the delivery of said note, promise and agree that I have not settled or released the said suit, or discharged or released the said Jerome from the payment of the said acceptance.

ANDREW J. ROE.

Dated April 20, 1847.

Witness requested the return of the note, and plaintiff requested the re-transfer of the draft. Plaintiff was an attorney at law in 1844 and 1847.

On his cross-examination, witness said he was unable to pay his note at any time after it was given; Platt knew my circumstances.

The counsel for the defendant hereupon offered in evidence the following receipt.

(The plaintiff's counsel objected to the evidence; the objection was overruled, and the plaintiff's counsel excepted.

The receipt was hereupon read in evidence, in the words and figures following, viz:

Received, New York, March 1st, 1844, of Chauncey Jerome, the following notes, which I receive as advances to raise money on for my own business, to purchase wool before the clips, if deemed proper, and funds or wool. I agree to put in his hands before the following notes or acceptances fall due, and agree to see the said Jerome harmless from all trouble for so doing, and have given the said Jerome a writing from H. Marten & Co., that the matter is guarranteed by them that the wool or money shall be in his hands in season to raise and take up the notes and acceptances; I also agree to take up the same myself.

FRANKLIN MERRILL.

	Notes.		Acceptances.	
1 90 days	1,500	6 months,	1,821	27
1 " "	2,500	5 "	1,678	73
1 " "	2,300	4 "	1,327	73
4 months	2,000	4 "	1,672	27
	8,300		6,500	00
75 days	1,493 75			
70 "	1,506 25			
	$11,300 00			

The above notes and acceptances I receive as advancements on wool, and agree to save Mr. Jerome harmless, and am to take up the paper myself.

FRANKLIN MERRILL.

The defendant's counsel hereupon proved the signature of Erastus Phelps, the subscribing witness, to the guaranty hereinafter mentioned, and that he was absent at Cincinnati; and then called

Henry Marten as a witness, who, being sworn, testified that in 1844 he was one of the firm of H. Marten & Co., who were brewers, at Poughkeepsie; that the firm was composed of himself, Steven F. Marten, and Henry Sellarlen; that the guaranty shown him was signed by the witness at the request of Merrill, and without the knowledge of his co-partners. It was executed in the hotel in Courtlandt street, kept by Erastus Phelps, the subscribing witness.

Said guaranty was here read in evidence, as follows:

Mr. Chauncey Jerome:

SIR: Any arrangement which you and M. Franklin Merrill may enter into in regard to your making advances to Merrill, we will hold ourselves responsible for, that the advances shall be met as may be agreed upon between you and him.

New York, March 4th, 1844.

HENRY MARTIN & CO. [S. S.]

Witness—ERASTUS PHELPS.

The firm failed after this—one of the partners having made an assignment of his property, which caused the failure of the firm. We had some paper out at that time, which was afterwards unpaid. I dont know whether there was any due and unpaid at the time.

It failed either that spring *spring* or the following spring; Merrill sent for me. I hesitated about signing it. He said the object of getting the guaranty was to get the notes from Jerome. A few days after I heard Merrill was indicted; I became uneasy about the matter, and came to New York to see Merrill, and found him at the Pearl Street House, in the fourth or fifth story, and had an interview with him. Some few days after this, within a week or ten days, I went round with Merrill to Platt's office, (Merrill was staying at the Pearl Street House at the time;) Platt and Merrill went into the inner office for a short time, and after they came out into the room where I was, Platt said to me that there was no consideration for the guaranty; that it was a mere promise and would not hold the firm. I did not see the guaranty at Platt's office, and never saw it until I saw it at New Haven at the trial there. Platt was a witness on the New Haven trial.

On cross-examination, the witness testified as follows:

When I signed the guaranty, Merrill was staying at Phelps' house; at the time I had the interview with Platt, Merrill was staying at the Pearl Street House. I saw Merrill twice in the interim, and on both occasions he was staying at the Pearl Street House. It did not exceed a fortnight between my signing the guaranty and the interview at Platt's. Was never at Platt's but once. Platt said

there was no consideration. Merrill took me to Platt's office to satisfy me the guaranty was not binding; my mind was satisfied with Mr. Platt's advice, and I went away.

Alonzo H. Mory, a witness for the defendant, testified that he was sheriff of Dutchess county on the first of January, 1844; knew Franklin Merrill.

Question. What was his pecuniary condition?

The question was objected to by the plaintiff's counsel as irrelevant and impertinent.

The objection was overruled, and plaintiff's counsel excepted.

Answer. From January to February, 1844, when he was indicted for obtaining goods under false pretence, he was regarded as wholly insolvent; I resided at Poughkeepsie; Merrill was sometimes in New York. I was sheriff for three years; I knew the firm of H. Martin & Co.

Question. What was their pecuniary condition?

The question was objected to by the plaintiff's counsel as irrelevant and impertinent. The objection was overruled, and plaintiff's counsel excepted.

Answer. They were embarrassed; there was a large amount of unsettled executions in the hands of the old sheriff when I took my office, in January, 1844, and some came in afterwards.

The first which came into my hands were paid; they ran along some time before they were; I am sure the first were paid.

James J. Bevins, a witness for the defendant, being sworn, says: I knew Franklin Merrill; I was deputy sheriff and keeper of Eldridge Street Prison; in January, March, or April, 1844, I first became acquainted with him; I was present several times with him in person at Platt's office; I saw Platt there; I went there with Merrill; he was in my custody; we then went to the office of Mr. Benedict, who was the attorney of Day, Owen, & Day, in the proceedings against Merrill; Mr. Platt, Mr. Benedict, and Mr. Day were there talking.

They were settling the suit somehow; Mr. Merrill wanted a certificate of character, and Day or Owen refused to give it. He said he would not lend himself to any such transaction.

Platt spoke to Benedict, and was interceding for the certificate; Mr. Benedict said, I don't know, Frank, but we can do something for you. Merrill said if he could get a certificate of good character, there was a clockmaker in New Haven that he could get a large amount of notes and credit from, if he could go before him as clear as he was before he was arrested in the suit of Day, Owen, & Day.

A paper was drawn up, which Merrill said would not do; another was then drawn; Benedict drew it, and said, "Frank, how will that suit you?" addressing Merrill; Benedict showed it to Platt, and asked him if that would do; Platt said that it was not as strong as

it might be; some alteration was then made in it; I saw a check pass between Platt, Benedict, and Merrill.

On his cross-examination, the witness testified—

I think Benedict drew the check, and Platt signed it; the interview at Benedict's might have been in March or February; I think nearer March; the certificate of good character was signed by Benedict; I think it had his name to it; I heard the certificate read; I heard two read; I don't know positively whether Benedict signed it; a certificate was delivered to Mr. Merrill in relation to his character; it was read and I heard it; it, I think, was signed by Benedict; I won't be positive, but I think he did; I know that somebody did.

Chauncey Jerome, junior, a witness for the defendant, being sworn, says, that he is the son of defendant; in 1844 the defendant was the only clockmaker in New Haven; never heard of my father being put in funds or wool to take up the draft.

On his cross-examination, he says:

I knew Merrill twelve years prior to his death; he died in 1844; he had been dealing with defendant for many years; he was in the habit of buying clocks on credit and paying for them.

These transactions extended to fifty or sixty thousand dollars.

The defendant here rested.

The plaintiff hereupon offered to read in evidence the following receipt, the execution of which was proved by Mexer, but the defendant's counsel objected to the same; and the Court excluded the same, to which the plaintiff's counsel excepted:

Received of O. H. Platt his receipt in full for an account of four hundred dollars, due Reynolds, Platt, and White for professional services; also a deed of one hundred and sixty-eight acres of land in Jackson, Mississippi, at a valuation of six hundred and twenty-eight dollars twenty-one cents, and six hundred dollars in cash, for which I have placed in his hands and sold to him a draft upon Chauncey Jerome, New Haven, for sixteen hundred seventy-eight dollars and seventy-three cents, at five months, dated March 1st, 1844, and accepted by him, payable at my order, and endorsed by me, which draft is fair business paper.

Dated April 4th, 1844.

FRANKLIN MERRILL.

The plaintiff's counsel called

Isaac G. Ogden, jr., who proved that he was first teller in the Phœnix Bank, and that the check now produced was on the day of its date paid at the bank.

No. 30. NEW YORK, *Ap'l 4th*, 1844.

Phœnix Bank pay to self or bearer five hundred and fifty dollars.

550^{00}_{100}$. O. H. PLATT.

The plaintiff's counsel thereupon called

Jesse W. Benedict as a witness, who testified that he is a counsellor at law, and was the attorney of Day, Owen, & Day in the proceedings against Merrill. Bevins was present once when the subject of a certificate was spoken of. I gave Mr. Merrill a certificate; but according to my recollection, Platt was not present at the time. Merrill asked for the certificate and urged it; I gave it as my own voluntary act; I was not bound to sign it; no one but Bevins and Merrill were present when it was given; Mr. Platt was not present at the settlement between Day, Owen, & Day and Merrill. The certificate which was asked for, as the terms of settlement, was a retraction of the charges of fraud which Day, Owen, & Day had made against Merrill in that suit; Mr. Day utterly refused to give any certificate as a condition of settlement.

The settlement had taken place and been consummated several weeks before I gave the certificate.

The settlement was made at Mr. Platt's office, by the exchange of releases there. The notes to be given by Merrill had been previously given.

At the time of the settlement, Platt, Day, and Merrill were present. I do not recollect whether Bevins was present or not. At this time a certificate was spoken of.

In none of the transactions, either at my office or at Platt's, was anything said about Merrill wanting the certificate to get credit or get notes of a clockmaker in New Haven. Nothing was said as to the purpose for which the certificate was wanted.

There were a great many interviews at my office. I recollect of Bevins being present only on one occasion.

No allusion was made to a clockmaker at any time when Platt was present. He never asked for a general certificate of good character.

Plaintiff's counsel here offered to show that Day, Owen, & Day paid Merrill damages for the arrest, and abandoned their claim against him.

The testimony so offered was excluded, and plaintiff's counsel excepted.

The witness says, I mean to affirm that Platt was not present when the certificate was given.

Plaintiff's counsel asked the witness this question:

Question. Had you or not become satisfied that the charge was not well founded, and could not be sustained?

The Court excluded the question, and plaintiff's counsel excepted.

The contents of the certificate were as follows: It stated the title of the suit. It briefly stated that he had been arrested on charges of fraud—very briefly specifying them—and that it had been settled in the following manner:

It stated the claim of Day, Owen, & Day at fifty-five hundred dollars; that notes and some endorsements of his father, amounting

to, I think, three thousand dollars, had been given; that some of the goods which had been taken had been returned to them, amounting to one thousand dollars. This left fifteen hundred dollars to be accounted for. Merrill claimed that this fifteen hundred dollars should be allowed to him for his damages, and that his costs, amounting to two hundred dollars, should be paid, which were the only terms on which he would settle; and that appeared by the certificate; and that the settlement did take place in that way. The two hundred dollars were paid for the costs. Platt rendered professional services to Merrill before April, 1844; they finished up before that. These were the civil suit, the Stillwell warrant, and three several suits for false imprisonment. The defendants were held to bail in two of them. There were two writs of habeas corpus.

There was a great deal of litigation in these suits, and a great deal of appearance before various judges. I think five hundred dollars a reasonable estimate for counsel fees for Mr. Platt.

On cross-examination, witness says:

The proceedings lasted until fifth February. They were commenced in January. In the settlement, when releases were passed, all that was paid was these costs. Nothing was paid for the counsel fees, as between counsel and client. Platt, acting for his client, tried to obtain the certificate. A certificate was prepared and rejected. I can't say whether I received it back at Platt's office or mine. It was for Day, Owen, & Day to sign. It was rejected. I don't know but that, in the last interview, when I gave Merrill the certificate, he had a short form of one for me to sign, and I may then have said that I could give him what would suit.

The certificate which was rejected was for Day to sign, and I helped to get him to settle on that basis, but he declined. I did not hear anything said about the clockmaker, or getting notes or credit. My room was small; and from that fact, and the whole course of the matter, I am confident that nothing was said on that subject.

Augustus Jerome, a witness called for plaintiff, testifies: I am a son of defendant, and knew Merrill; he had dealings with father.

Question. Did Merrill owe the defendant anything; and if so, how much, in March, 1844, when he gave the order and acceptance?

The Court excluded the question, and plaintiff's counsel excepted.

I was in New York on the twenty-third or twenty-fourth April, 1844, and saw Merrill. He was staying at the Pearl Street House at that time.

William F. Leonard, a witness called for plaintiff, testified:

I was one of the proprietors of the Pearl Street House in 1844. Merrill was there in April, 1844. He stayed there about two weeks. He had not been there prior to that time for five or six months.

On being cross-examined, witness says: Merrill's name was not entered on the books. He was there under another name. I put another name for him on the books at his request. I have not seen the books for five years. I do not refresh my memory from the books. I refreshed my memory from a transaction that occurred at that time.

On his re-direct examination, the witness says: Merrill's bill was in the neighborhood of twenty dollars. We charged one dollar and fifty cents per day. It must have been toward the last part of April that he was there.

The defendant, at the request of plaintiff's counsel, here produces the following receipt, and the same is read in evidence by the plaintiff's counsel:

1	note	6	months	after	date	for	$3,500 00
1	"	4	"	"	"	"	2,000 00
1	"	4	"	"	"	"	3,000 00
1	"	90	days	"	"	"	2,300 00
1	"	65	"	"	"	"	3,000 00
1	"	60	"	"	"	"	2,500 00
1	"	90	"	"	"	"	1,500 00
							$17,800 00

The above notes I received of Chauncey Jerome as advancements to raise money with to carry my intentions into effect, which is to purchase wool and make advances on the same before the clip, if it proves to warrant a safe business.

And I hold and pledge myself that I will see Mr. Jerome harmless in this advancement to me; if not the wool, I will take up these notes as they fall due, and will also give Messrs. H. Marten & Co. as security that they will guaranty this agreement.

March 1st, 1844.

FRANKLIN MERRILL.

The plaintiff's counsel likewise proved and read in evidence the following certificate:

B.

To whom this may concern. Any note or notes which may be offered by the bearer for discount or otherwise, signed by me, and payable to the order of Franklin Merrill, and dated March 1st, 1844, are good, true business notes.

New York, March 1st, 1844.

CHAUNCEY JEROME.

The plaintiff's counsel hereupon read in evidence of the deposition of

James C. W. Ogden, taken ex parte without notice, under the act of Congress, October 16th, 1851, and opened in Court in the trial, who, being first carefully cautioned and sworn to testify the truth in this cause, testified as follows:

That he is of the age of forty years; resides at Collinsville, about eight miles from the city of Rochester, and that his business is that of a bookkeeper; that he knows the plaintiff in this suit, and that he knew Franklin Merrill in his lifetime, who died about the year 1844; thinks in the fall of that year.

Question. Do you know anything of Merrill's having in his hands some notes or drafts of Chauncey Jerome? If so, state all you know about them, their origin, and what was done with them; and particularly what you know, if anything, of the purchase of O. H. Platt of one of these notes or drafts, and all the circumstances connected therewith.

Answer. In the early part of March, 1844, Merrill showed witness several notes signed by Chauncey Jerome, amounting to some seventeen thousand dollars; deponent went to Horace Burr, a broker in Wall street; Burr took two or three of the notes; Merrill procured the certificate, and brought it to deponent.

Deponent here produces the certificate, of which the following is a copy:

To whom this may concern. Any note or notes which may be offered by the bearer for discount or otherwise, signed by me, and payable to the order of Franklin Merrill, and dated March 1st, 1844, are good, true business notes.

New York, March 1st, 1844.

CHAUNCEY JEROME.

The original certificate is marked with the letter B.

After witness procured the certificate, he negotiated two or three of the notes through Mr. Burr, amounting to some seven thousand dollars.

It was proposed to deponent by Burr, and by deponent to Merrill, to have the notes changed into drafts, or acceptance of Jerome in smaller and odd amounts, in order that they might be more easily negotiated.

Deponent then had, as he thinks, all the notes in his hands, except those previously negotiated through Burr. Deponent gave the notes to Merrill, and on the following day he brought deponent acceptances to about the same amount. Deponent went with Merrill to the United States Hotel to get the notes exchanged, and left Merrill there with Jerome. The next morning Merrill brought the acceptances or the greater portion of them to deponent.

The counsel for the plaintiff offers to read the following portions of the depositions, viz:

Knowing that Mr. Platt had some surplus funds, deponent offered

one of the acceptances to him, amounting to some sixteen or seventeen hundred dollars or more, at the rate of about fourteen per cent. discount, being about the same rate as which the others had been negotiated through Mr. Burr.

Deponent told Platt at the time that Jerome was a man of property, and that he has reason to believe that it was business paper, having had Jerome's certificate to that effect, which was in the hands of Mr. Burr, and that, as deponent thought, the draft which he offered would be paid at maturity without doubt. Platt at that time refused to discount the draft.

But the Court refused to allow the evidence to be read, and plaintiff's counsel excepted.

Deponent then gave the drafts to Merrill, as he thinks, all of them.

A few days afterwards, and some time early in April, Mr. Platt came to deponent, and told him that Merrill wanted him to discount one of those drafts, and asked deponent if he still considered them good paper.

Deponent then introduced Platt to Mr. Burr, who informed him as to the responsibility of Jerome, and of his having in his hands the certificate mentioned above. Deponent at the same time stated to Mr. Platt that he considered it business paper. Plaintiff's counsel then offered to read the following portion of the deposition:

Mr. Platt then purchased the draft, as deponent understood, and paid, in part by a bill of costs, and in part by a certificate for some lands, and the residue being about six hundred dollars in money. Up to this time, and for sometime after, deponent had full confidence in the integrity of Merrill, and knew nothing to the contrary until Mr. Burr told him that Jerome was trying to get back the drafts.

This was about the 10th or 15th April; thinks about the middle. Jerome was in the city two or three times while witness was engaged in getting the drafts negotiated. Deponent saw him upon one of these occasions in conversation with Merrill. The draft which Mr. Platt purchased, as stated by deponent, is the one in controversy in this suit.

But the Court refused to allow the same to be read, and plaintiff's counsel excepted.

Merrill, at the time the drafts were negotiated, claimed to be worth twenty-five or thirty thousand dollars, and was reported, among those acquainted with his affairs, to be worth that sum; has no knowledge that Mr. Platt ever saw or heard anything of the existence of notes which were exchanged for the drafts prior to the purchase of the draft by him.

Addison S. Diossy, a witness for the plaintiff, testified that he was in the employ of Mr. Platt in April, 1847. He removed to Vermont, and quit the profession and this State in the summer of 1847.

On his cross-examination, the witness testified that he transferred his business in March or April, 1847. He was making arrangements to quit the law for some time prior to that.

The plaintiff hereupon rested.

The defendant recalled

James J. Bevins, who testified: It appears by the books that it was the fifth of February, 1844, that I was at Benedict's office. I think Mr. Marten was there a part of the time. There was a small room, and Benedict kept going in and out. They had a long room. I was not in the small room. Benedict was not present all the time. Platt was in the outer room part of the time. Merrill was in the room with me. Platt was sometimes in one room, and sometimes in another.

The Court charged the jury—

This action is brought to recover a draft for $1,678\frac{73}{100}$, drawn by Franklin Merrill upon Chauncey Jerome, the defendant, and accepted by him. The draft has been produced, and the usual proof given that *that* the draft was made, accepted, and transferred to plaintiff before the suit. This suffices, in the first instance, to authorize a verdict for the plaintiff, which verdict plaintiff is entitled to, unless the defendant has established some legal ground for defence.

The mere possession of the acceptances, under the circumstances I have stated, imports that it came to the plaintiff's hands before maturity, and was taken bona fide and for value.

This is the presumption of the law, which remains until overcome by proof on the part of the defendant.

Now the defendant insists that he is an accommodation acceptor for Merrill, the prayer, and has not received any value for the draft, nor the indemnity which he supposed he had taken from Merrill by way of security against liability upon the draft.

The evidence is, that Merrill was to give him a guaranty, in order to protect him against any loss on account of this liability, and which was the inducement, on the part of the acceptor, to put his name on the paper. That security was given him by the firm of Henry Marten & Co. which we have here.

(Here the Judge read the guaranty.)

This is the guaranty which was given for these acceptances. It is insisted by the defendant, that this guaranty is void, invalid; not binding on the firm; further, that the firm, at the time *at the time* it was given, (assuming it to be valid for any purpose,) were bankrupts, and therefore the security afforded no indemnity to the defendant.

Now, I have said that it is insisted on by the defendant that he has been imposed upon in giving this acceptance for the benefit of Merrill, and, in consequence of the insufficiency of the security, has failed in being indemnified; and if he be subjected to the payment of this draft, he will suffer a loss to the whole amount,

principal and interest. It is agreed by the learned counsel for the plaintiff, that, conceding this to be so, yet the imposition which has happened was not brought about by the instrumentality of Merrill, or rather not brought about by any fraudulent design on the part of Merrill. But you will see whether there was any improper design or purpose mixed up with this transaction or not; has no bearing on the question as to the condition under which the acceptor finds himself placed. He has failed in procuring the indemnity, which was the inducement to him to pledge his name to the paper, and whether the result was brought about by fraud or contrivance of Merrill, or whether it was the misfortune of Jerome without fraud; certainly, so far as the consequences press on the acceptor, can make no difference in good sense, or in judgment of law.

To this charge the plaintiff's counsel excepted.

The guaranty, if it was good, according to the expectations and belief of Jerome at the time, provided there was a recovery against him, would have furnished a security on which he could fall back and reimburse himself for loss in case he paid the acceptance.

As the case is, even if it be legal, the parties being bankrupt, it furnished no security; and if a recovery ensue against Jerome, he must bear the loss.

This, of itself, is no defence on the part of the accommodation acceptor. He may still be liable, although he has no indemnity to resort to, according to the original agreement under which he gave the acceptance.

But it produces this legal consequence, that the plaintiff who holds and is now seeking to enforce the paper against the acceptor, under such circumstances, must show that he came to the paper bona fide, (that is, honestly,) and for value, and if he fails in making out to your satisfaction either one of these circumstances he, cannot recover.

If he is not a bona fide holder of, he received the paper, knowing the circumstances under which it was obtained.

To this charge the plaintiff's counsel excepted.

This is, for very obvious reasons; for, if the party is not the holder, bona fide, or, in other words, if he received the paper, knowing the circumstances under which it was obtained, he has not dealt fairly as repects the acceptor, because he took it knowing that the acceptor had not got his security, and would sustain a loss; and under such circumstances, if he took the note with knowledge, he would perpetrate a fraud on the acceptor.

To this charge the plaintiff's counsel excepted.

And in the other aspect, as between two innocent men, if he paid nothing for it, as between him and the acceptor, both being honest, the equities are in favor of the accomodation acceptor, because, if the plaintiff does not recover, he does not lose anything, but if he does recover, he makes his demand out of the accommodation acceptor, who gets nothing.

To this charge the plaintiff's counsel excepted.

Now this raises the important questions:

First. Whether the plaintiff came to the possession of this paper bona fide, without any knowledge of the imposition practised on Jerome, the accommodation acceptor.

On the part of the plaintiff, it is claimed that he took it without being chargeable with knowledge.

On the part of the defendant, it is insisted that the plaintiff took the paper with knowledge.

It is not necessary to prove, point blank, that the holder actually knew that there had been imposition practised on the acceptor.

It is sufficient if there be circumstances attending his receipt and taking of the paper of suspicion, which would lead a right-minded man, who was reasonably diligent in his own business, to institute an inquiry into the facts, for the purpose of finding out the truth of the matter before he took it. If there were circumstances of that character, laying fair ground for suspicion as to the making of the paper, he is bound to inquire before he assumes the risk of purchasing. This rule is founded in fair dealing, and on principles of morality and honesty between man and man in the transactions of life.

To this charge the plaintiff's counsel excepted.

Now, this branch of the case turns very much on the testimony of Martin.

The plaintiff's counsel concedes, that if the communication with the plaintiff as to the guaranty took place before he took the draft, he cannot be regarded as a bona fide holder, and you must look critically at the evidence furnished by the plaintiff and defendant bearing on this question, which is one of fact for you to determine.

(The Court here reviewed the testimony on this point.)

He states the interview, (I am not going over it,) and that he was advised by the plaintiff the guaranty was void for want of consideration; whether the advice was good or bad, is immaterial. The guaranty was, in fact, invalid, because Martin's partners had not signed the paper; and the transaction was not of the range of the partnership business, as one partner has no right thus to bind the firm. The plaintiff, a professional man, was called upon to state whether the paper was valid, and he is therefore chargeable with knowledge that the paper had this infirmity for this reason.

To this charge the plaintiff's counsel excepted.

It is said that this was after plaintiff had taken the draft from Merrill, and therefore had no pertinent bearing in the legal title of the plaintiff to the paper; and if this fact is justified by the evidence, the conclusions based upon it are sound, because, if the papers was taken *was taken*, and the act consummated by the transfer to the holder, before the knowledge was brought home to him, the knowledge could have no retroactive effect.

Defendant says that the conversation took place prior to the trans-

fer of the draft to plaintiff; and on this point, part of the case turns.

The Court here reviewed the testimony of the witnesses on this point.

Another ground relied upon by the defendant's counsel, as bringing home knowledge to plaintiff, is the fact testified to by Bevins, speaking of a difficulty in which Merrill had been involved with Day, Owen, & Day.

You've heard a great deal about this; but the case cannot turn upon the transactions between these parties, and I therefore don't consider it materi l, and shall not go into it. But in the settlement of that transaction, Bevins, who had charge of Merrill, says, that at the closing up of the transaction, in one of the interviews at Mr. Benedict's office, and in the presence of the plaintiff, Merrill urged his adversary to give him a certificate of character; that is, a certificate going to exculpate him from the charges made against him in that transaction; and this was insisted upon by Platt and Merrill, and was refused to be given by the opposite party, and the transaction was settled without it.

But, at the winding up, Bevans says that there was an application to counsel of Day, Owen, & Day to give a certificate, and that in the presence of Platt, and while urging on the opposite party the giving of such certificate, he, Merrill, gave, as a reason, that there was a clockmaker in New Haven who, if he got it, would furnish him a loan, either in money or notes, or in some other way. This is denied by the plaintiff, and Mr. Benedict is called as a witness, and he says that he heard no such conversation. I am not going to trouble you with this, because it is not a controlling feature in the case, though it has a considerable bearing.

Both of these witnesses are respectable and upright men, and I believe that neither intended to falsify the truth, and therefore I don't think that any imputation should be cast on either. It does not require any great amount of charity to lead to the opinion that both are honest, but is proper that I should say to you, that the positive evidence of a respectable witness that he heard a particular declaration given in the words, or nearly in the words of it, is not explained away or overthrown by the testimony of another person equally intelligent or respectable, who did not happen to hear it.

The affirmative testimony given by a witness could not be well mistaken if he is honest, because there is a fact, an affirmative fact involved, and, on the other side, the absence of any fact. He did not hear it. But it does not follow that, therefore, what the other witness states is untrue.

One may have heard it, and the other not. One may have had better opportunities to hear it. The two statements, therefore, are not entirely inconsistent or contradictory, and don't, like two mechanical forces, neutralize each other.

If, on the evidence, you come to the conclusion that the plaintiff knew, when he took the draft, that *that* the draft had been accepted

by Jerome, and, as an inducement, the guaranty was given, and which turned out to be invalid; if plaintiff knew these facts when he took the draft from Merrill, then, even if he had paid full face of it in gold, he cannot recover.

To this charge the plaintiff's counsel excepted.

But, on the other hand, if he had no knowledge of these facts, and of the circumstances attending the getting the acceptances, and there were no suspicious circumstances which should have induced him to make inquiry, then he is entitled to recover, so far as this branch of the case is concerned.

But, assuming that the plaintiff had no knowledge, and the circumstances were not such as properly charged him with notice, and all these objections are removed, then there is another ground of defence; that is, that the plaintiff paid no value for the acceptance. If he has not paid value, then he cannot recover; and you must inquire into this fact.

To this charge plaintiff's counsel excepted.

The evidence, on the part of the plaintiff, for the purpose of making out value, consists of the services he had rendered Merrill in the course of the litigation with Day, Owen, & Day. It seemed there were not only the criminal proceedings, but also other suits growing out of them. Plaintiff has proved that the counsel fees for these services in these suits rendered by the plaintiff were reasonably worth five hundred dollars, and the inference intended to be drawn is, that the five hundred dollars formed a part of the consideration for the acceptance. In addition, there is evidence of a check drawn by plaintiff on the Phœnix Bank, where he deposited the acceptance. I don't see how this has any bearing on the consideration of the acceptance. It should have been further proved that this money had been paid to Merrill. The fact alone authorizes no legal inference that it was paid to Merrill.

The Court hereupon stated, I have been requested by the plaintiff's counsel to charge you upon some propositions submitted by him in writing, and I will now consider them.

The first is, that there is not in the case any evidence from which the jury could legally find that the acceptance in question was obtained by fraud or other improper practice, or fraudulently misapplied, so as to cast upon the plaintiff the burthen of giving evidence that he received the draft in question for a valuable consideration.

The Court declined so to charge, but charged on the point that, if there is not in the case any evidence from which the jury could legally find that the acceptance in question was obtained by any fraud or other improper practice, or fraudulently misapplied, then the burthen is not cast upon the plaintiff of giving evidence that he received the draft in question for a valuable consideration.

To the refusal to charge as requested, and to this charge as given, plaintiff's counsel excepted.

The second is, that if Merrill did not perform the agreement to put wool, funds, or money into the hands of Jerome, and to hold him harmless, such failure did not constitute a fraud which would cast such burthen upon the plaintiff.

That is so.

The third is, that if Merrill died before any of the notes or acceptances received by him from Jerome fell due, then his omission to perform the agreement to put wool, funds, or money in the hands of Jerome, and to hold him harmless, would not constitue a fraud which would cast such burden on the plaintiff.

That is so.

The fourth is, that the only legal objection to the validity of the guaranty of Henry Marten & Co. is, that it does not bind the partners who did not seal it. If the paper, on its face, conveys information that it was the act of only one of the partners, then there is no evidence in the case from which the jury can legally find that such legal defect was any better known to Merrill than to Jerome, and, consequently, that defect in the guaranty is not evidence of fraud which would cast such burden on the plaintiff.

That is so.

The fifth is, that there is no evidence in the case of any representations made by Merrill to Jerome concerning the solvency of H. Marten & Co., or that Merrill knew or supposed them to be insolvent, and, therefore, if that firm was insolvent, the fact is not evidence of a fraud upon Jerome which would cast such burden on the plaintiff.

As to this, I agree that it would be no evidence of fraudulent intent on the part of Merrill, if he did not know that they were insolvent; but if they were, in fact, insolvent, then there was an imposition, nevertheless, on Jerome.

The transaction implied ability, and if that failed, it operated as an imposition, and was an imposition.

To which refusal to charge as requested, and the charge as made on this point, the counsel for the plaintiff excepted.

The sixth is, that there is no evidence from which the jury can legally find that any of the notes or acceptances received by Merrill from Jerome, except the acceptance now in suit, was negotiated or used by Platt, so as to charge Jerome.

That is so.

The seventh is, that if from the evidence the jury believe that the draft in question was in the hands of Platt on the fourth of April, 1844, and also that the alleged conversation of Platt with Marten was subsequent to that day, and that Platt was not present at or prior to the conversation testified to by Bevins as having occurred in Benedict's office, then there is no evidence in the case from which the jury can legally find that Platt had any notice of the fraud supposed to have been practised upon Jerome.

There is no doubt of that.

The eighth is, that if the jury believe that the receipt of March first, 1844, given in evidence by the defendant, was not given when defendant's acceptance on the draft in question was obtained, but at a subsequent period, it is not competent evidence in the case, and should be disregarded by the jury.

There is no doubt of that.

The ninth is, that there is no evidence that Merrill perpetrated any fraud on Day, Owen & Day.

As to this, whether Merrill did or did not, has nothing to do with the case.

Now, having charged on these, I will recapitulate.

If you are satisfied that Jerome was induced to accept the draft in question, with other drafts, upon the assurance of the guaranty of H. Marten & Co., by way of indemnity, and that this guaranty turned out to be legally invalid, by the reason of the mode in which it is executed, and to be of no value, on account of the insolvency of H. Marten & Co., and that, by reason of these circumstances, the guaranty was unavailable, and thereby Jerome was imposed upon, it throws the burden on the plaintiff of showing that he became a purchaser of the acceptance bona fide and for value.

To this charge the plaintiff's counsel excepted.

And if, on the evidence in the case, you are satisfied that Platt had knowledge of the circumstances under which the acceptance was given, and the imposition practised upon Jerome when it was given, then plaintiff cannot recover, even if a valuable consideration be shown.

Or, supposing that the plaintiff is not chargeable with knowledge of these circumstances, then he cannot recover unless he has paid value.

To which charge the plaintiff's counsel excepted.

The jury rendered a verdict for the defendant; to set aside which verdict this bill of exceptions has been taken.

And because the several matters aforesaid, and the exceptions *offered* and taken to the opinions and decisions of the said Circuit Judge, do not appear on the record of the said trial, therefore, on the prayer of the plaintiff, by his counsel, the said Circuit Judge hath to this bill of exceptions put his seal, this sixth day of May, in the year of our Lord one thousand eight hundred and fifty-three.

S. NELSON, [SEAL.]

I have examined the foregoing bill of exceptions, and compared it with the case and amendments, and find it correct.

Nov. 24, '55.

GEO. C. GODDARD,
Att'y of Dfd't.

(Filed Nov. 24, 1855.)